

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 342 OF 1983

The Commissioner of Income-Tax  
Gujarat-II, Ahmedabad .. Applicant

Versus

M/s. Kamdhenu, Ahmedabad .. Respondent

Date of Decision : 29th November 1996

For Approval and Signature

THE HONOURABLE MR. JUSTICE R.K. ABICHANDANI

THE HONOURABLE MR. JUSTICE RAJESH BALIA

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of Judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. Bharat J. Shelat for Mr. Manish R. Bhatt for applicant

Mr. D.A. Mehta with Mr. R.K. Patel & B.D. Karia for respondent

Coram : R.K. Abichandani and Rajesh Balia, JJ  
29th November 1996

Oral Judgement (Per Rajesh Balia, J)

1. At the instance of the Commissioner of Income Tax, Ahmedabad, the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question of law for the opinion of this Court which arose out of its order in ITA No. 435/Ahd/1982 relating to assessment year 1976-77:

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee partnership firm was entitled to continuation of registration?"

2. The firm is consisting of three partners Shri Gautam Sarabhai as karta of HUF, Shri Kartikeya V. Sarabhai as karta of his HUF and Shri Kartikeya V. Sarabhai as karta of HUF Vikram K. Sarabhai. Since Kartikeya V. Sarabhai in his capacity as karta of two HUFs was separately shown to be partner, though represented by the same individual, the assessing officer declined to register the firm under the Income Tax Act. The claim of the revenue about refusal to register the partnership firm for the purpose of income tax was not accepted by the Tribunal, hence, the aforesaid question.

3. Both the learned counsel for the parties state that the question is squarely covered by the decision of this Court in C.I.T. vs. Budhalal Amolakdas reported in 1981 129 ITR 97 in favour of the assessee wherein it has been held that same person can be partner in two capacities in the same firm, and the same principle has been applied to the petitioner's own case for the earlier assessment year 1975-76 by this Court in Income Tax Reference No. 64 of 1983.

4. In view of the aforesaid, the question referred to us is also answered in affirmative, that is to say, in favour of the assessee and against the revenue. No costs.

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